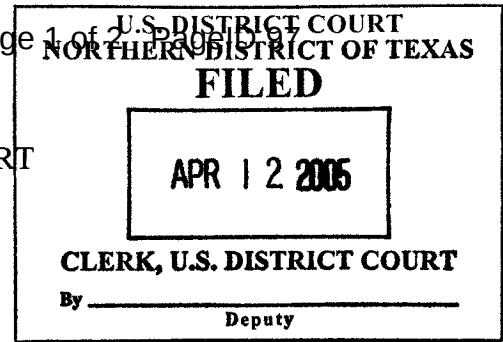


ORIGINAL

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



BOBBY J. HISE

Plaintiff,

VS.

UNITED STATES DEPARTMENT
OF JUSTICE, ET AL.

Defendants.

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NO. 3-04-CV-2468-P

**FINDINGS AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

Plaintiff Bobby J. Hise, appearing *pro se*, has filed a motion to proceed *in forma pauperis* on appeal. For the reasons stated herein, the district court should find that plaintiff is indigent but certify that his appeal is not taken in good faith.

I.

This is a *pro se* civil action brought by Plaintiff Bobby J. Hise against various federal agencies and high-ranking government officials alleging that their failure to prevent illegal and undocumented aliens from entering the United States has caused him economic harm. After screening the complaint, the court summarily dismissed this action for lack of subject matter jurisdiction. *Hise v. United States Dep't of Justice*, 2005 WL 130017 at *2 (N.D. Tex. Jan. 21, 2005), *rec. adopted*, 2005 WL 323736 (N.D. Tex. Feb. 9, 2005). Plaintiff filed a notice of appeal on March 17, 2005 and now seeks leave to proceed *in forma pauperis* on appeal.

II.

The standards governing *in forma pauperis* motions are set forth in 28 U.S.C. § 1915(a). A district court "may authorize the commencement, prosecution or defense of any suit . . . or appeal

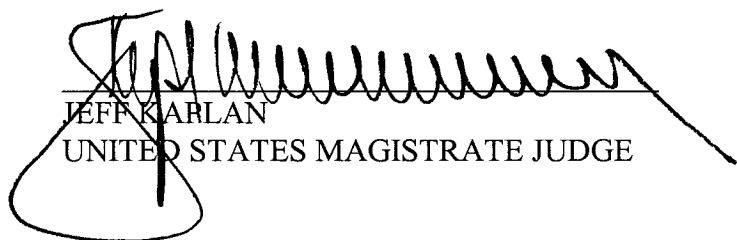
therein, without the prepayment of fees and costs or security therefor, by a person who makes an affidavit that he is unable to pay such costs or give security therefor." 28 U.S.C. § 1915(a)(1). The affidavit must also state "the nature of the action, defense or appeal and affiant's belief that he is entitled to redress." *Id.* A court may certify in writing that the appeal is not taken in good faith. *Id.* § 1915(a)(3). An appeal is taken in good faith if it presents an arguable issue on the merits and therefore is not frivolous. *See Coppedge v. United States*, 369 U.S. 438, 445, 82 S.Ct. 917, 921, 8 L.Ed.2d 21 (1962).

The information submitted by plaintiff shows that he lacks the financial resources to pay the costs of an appeal. However, plaintiff's appeal is patently frivolous. For the reasons set forth in the report and recommendation dated January 21, 2005, which was adopted by the district judge on February 9, 2005, plaintiff's claims against the United States of America, including its federal agencies and government employees acting in their official capacities, are barred by sovereign immunity. Plaintiff has failed to present an arguable issue on the merits to establish a basis for federal subject matter jurisdiction. Consequently, the district court should certify that this appeal is not taken in good faith.

RECOMMENDATION

The district court should find that plaintiff is indigent but certify that his appeal is not taken in good faith. Accordingly, plaintiff's motion to proceed *in forma pauperis* on appeal should be denied.

DATED: April 12, 2005.


JEFF KARLAN
UNITED STATES MAGISTRATE JUDGE